

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 426 of 1997

in

CIVIL APPLICATION No 951 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

VISHNUBHAI BHOLIDAS PATEL

Appearance:

MR DA BAMBHANIA for Petitioners
MR P. UPADHYAY for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 17/09/97

ORAL JUDGEMENT

Admitted. Mr. P. Upadhyay appears and waives

service of notice of admission on behalf of the respondent workman. In the facts and circumstances of the case the matter is taken up for hearing to day.

This appeal is filed against the order passed by the learned Single Judge on March 20, 1997 in Civil Application No. 951 of 1994 in Special Civil Application No. 6031 of 1993.

The respondent is original petitioner, who filed Special Civil Application No. 6031 of 1993 for appropriate writ, direction or order quashing and setting aside order dt. 3rd March 1993 issued by the Executive Engineer (R & B), Navrangpura by which he was asked to work as Labourer in the pay scale of Rs.900-1500 and for a declaration that the action of respondent no.4 of not paying legitimate benefits from November 20, 1988 is illegal and contrary to law and to grant all consequential benefits.

Since the petitioner was not paid his salary and he was not allowed to work, he filed Civil Application No.951 of 1994 for reliefs prayed in para 9. It reads as under.

- "(a) Admit and allow this application.
- (b) Direct the respondents to release the unpaid salaries to the petitioner forthwith.
- (c) Direct the Respdt. No.1 to 3 for taking disciplinary action against respdt. No.4 and further be pleased to restrain the respondents from giving laborious work in the labour cadre to the petitioner and further be pleased to direct to give work of clerical cadre forthwith and further be pleased to direct respondents to remain present before this Hon'ble High Court at the next returnable date of this application pending admission hearing and final disposal of this application.
- (d) Any other or further relief as may be deemed fit in the interest of justice may be granted."

That Civil Application was filed on April 4, 1994. Notice was issued but till the date the learned Single Judge passed order, i.e. on March 20, 1997, no counter affidavit was filed. Thus, for about three years, the matter was pending. It is stated by the applicant in that Civil Application that he could be asked to work only in clerical cadre. It was further stated that even though he was ready and willing to work entrusted to him, he was not allowed to sign muster roll and was not paid salary.

4. The learned Single Judge after hearing the parties, granted application by passing an order on March 20, 1997, the operative part thereof reads as under:

" In these circumstances this Civil Application is allowed. The respondents are directed to make the payment of regular wages payable to the petitioner as per his appointment order dated 3.5.1993 until date within a period of three weeks from to day. Withholding of regular wages on the face of it appears to be wholly arbitrary and unjust for penalising the petitioner for approaching this court for ventilating his grievance demanding a better deal. Therefore, in my opinion, the petitioner is entitled to get compensatory interest for non-payment of regular emoluments as per the appointment order which shall be payable to the petitioner at the rate of 24%. It will be open for the State of Gujarat to hold a proper enquiry and fix the responsibility of this act of gross unreasonable treatment of its employees, and recover the amount of compensatory interest paid to the petitioner from that concerned officer. However, this would not absolve the respondent State Government from making the payment to arrears of emoluments and the interest payable thereon within three weeks from to day and the future payments as per the appointment order regularly. This is without prejudice to the petitioner's contentions in the main petition."

Mr. Bambhaniya, learned Additional Government Pleader contended that the petitioner is not entitled to salary as he had not worked. He submitted that the petitioner was appointed as a casual labourer. He was a daily rated worker. In accordance with the resolution of the Government dt. October 17, 1988, he was entitled to certain benefits. The State has always extended those benefits to him. According to Mr. Bambhaniya, by a resolution dt. 1st May 1991 it was decided that the labourers who had completed service of 7 years and who had passed SSC examination, would perform duty in clerical cadre and that was how the petitioner was asked to perform duty in clerical cadre. Thereafter, however, by a subsequent resolution dt. October 30, 1991, earlier resolution dt. May 1, 1991 was modified and it was decided that though salary of such employees would be protected but they would perform duties as labourers only.

Mr. Bambhaniya submitted that in the instant case, it is an admitted fact that the respondent was appointed as a Labourer on daily wages and hence he cannot insist that he must be entrusted only clerical work. To that extent, the contention is well founded. The petition was not justified in insisting only for clerical work. There was no sufficient cause for the petitioner to refuse to work as labourer. Looking to Civil Application, however, it is the case of the petitioner that he had worked what was entrusted to him by the authorities. It is true that he was insisting for clerical work in view of resolution dt. 1st May 1991. It is also true that now in view of the subsequent resolution dt. October 30, 1991, he cannot insist for clerical work. But in view of the fact that there was no affidavit-in-reply denying the averments in the Civil Application, in our opinion, it cannot be said that by directing wages to be paid the learned Single Judge has committed any error of law which requires interference in appeal.

At the same time, in the light of the facts and circumstances and subsequent resolution, dt. October 30, 1991, we are of the view that the direction to pay interest was not justified. Hence, the order passed by the learned Single Judge regarding payment of wages is not disturbed. It is, however, made it clear that such payment will be subject to the final outcome of the petition. So far as payment of interest is concerned, it is hereby set aside.

The learned counsel for the petitioner-workman has stated that without prejudice to rights and contentions, the petitioner will work as labourer, if such work is entrusted to him. The appellant authority may now file affidavit-in-reply in the main matter which is of 1993. As and when counter is filed and copy is served to the learned counsel for the workman herein, it is open to the parties to request the learned Single Judge for taking the matter for final hearing. As and when such request will be made the learned Single Judge will pass appropriate order in accordance with law.

Letters Patent is partly allowed. The appellant is directed to make payment to the respondent on or before 31st October 1997. In the facts and circumstances of the case, no order as to costs.

Dt. 17.9.1997. (C.K.THAKKER J.)

(S.D.PANDIT J.)

